

## **Separate cost equalization agreements may be null and void - Insurance Law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - [www.grprainer.com/en](http://www.grprainer.com/en) conclude: In its decision of September 19, 2013 (File number: 12 U 86/13), the OLG ruled that such agreements are null and void if they are concluded directly with the insurance carrier, and if therefore the insurance contract and the cost equalization arrangements form one economic unit. In particular, the continued payment clauses should be qualified as general terms and conditions (GTC), and under certain circumstances they are invalid because they lack in transparency and come as a surprise to the customer.

In the case at hand, the Defendant had concluded an insurance contract and a cost equalization agreement with a life insurance carrier. When the insured cancelled both contracts and no longer paid, the life insurance carrier sued her for payment of outstanding set-up and handling fees. The Defendant assumed that the cost equalization agreement should be ineffective upon her cancelling the contract, and argued that the contract was invalid because the provisions of the Insurance Contract Act (VVG) had been circumvented, and she argued that the insurance carrier could not hold her to honouring the agreement upon cancellation.

The Regional Court considered the agreement to be effective and allowed the action. But the appeal to the OLG was successful. The OLG agreed that the provisions of the VVG had been circumvented and declared the agreement in question invalid.

The OLG also explained that the agreements, as part of the general terms and conditions, were ineffective because of lacking transparency. The OLG saw a lack of transparency in the way the relevant contract documents were formulated since they gave the customer the impression that the contracts are so interrelated that they should rise and fall together. This was said to be case especially since the insurance carrier charged only one amount that included the set-up and handling fees as well as the insurance premium. Neither was this changed by the fact that the conditions revealed that the set-up and handling costs were to be paid via a separate cost equalization agreement.

The Court also found the clauses surprising. According to the OLG, an insured regularly would not expect having to make further monthly payments after cancellation for expenses the insurance carrier incurred for setting up the policy.

Concluding, cancelling or changing a life insurance contract can lead to many different legal questions and problems. A lawyer experienced in insurance law can consult and help in arranging, implementing, cancelling and terminating insurance contracts and help to enforce certain claims.

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Anlage: Bild

